



**Texas Department  
of Insurance**

TDI response to House Insurance Committee  
Request for Information of August 11, 2020

September 8, 2020

COVID-19 Pandemic

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### **The Committee also seeks the following information related to the COVID-19 pandemic:**

#### **1. How prevalent is price gouging related to COVID-19 testing? What are state agencies doing in order to monitor price gouging associated with COVID-19 testing?**

The Texas Attorney General would investigate price gouging, and the Texas Health and Human Services Commission regulates hospitals and freestanding ERs. For state-regulated health plans, TDI may have the authority to investigate depending on the facts. Those health plans also have a duty to report suspected fraud to TDI.

TDI has received two consumer complaints about COVID-19 test price gouging, referring one to the Texas Office of the Attorney General. Staff were trained to watch for such complaints and to record them using a new code to track them.

TDI also has developed and distributed information to help consumers avoid unnecessary or inflated costs for COVID-19 testing. A May 2020 TDI [press release](#) covers steps to take before getting a test and a July 2020 [release](#) and [a video](#) explain how to avoid extra charges.

#### **2. What steps are being taken in order to prevent surprise medical billing associated with COVID-19 treatment? What steps can consumers take in order to avoid these surprise medical bills?**

SB 1264, passed into law in 2019, effectively eliminates surprise billing for residents who have state-regulated health plans. In addition, federal legislation requires most health plans to cover medically necessary testing for COVID-19 that's consistent with the U.S. Centers for Disease Control and Prevention guidance at no cost to the consumer. TDI issued bulletins to the industry on the federal legislation for [state-regulated plans](#) and for [alternate health plans](#).

TDI has taken other steps to prevent unwarranted COVID-19 medical charges. A March 11, 2020, [bulletin](#) encourages health plans and health maintenance organizations to consider the following actions related to prevention, testing, and treatment of COVID-19:

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- Waive copayments, co-insurance, and deductibles for COVID-19 testing consistent with guidance issued by the Centers for Disease Control and Prevention (CDC). This includes the cost of the visit to get the test and related testing services.
- Waive consumer cost-sharing and facilitate expanded use of telemedicine.
- Cover necessary medical equipment, supplies, and services.
- Waive penalties, restrictions, and claims denials for necessary out-of-network services.
- Waive requirements for preauthorization, referrals, notification of hospital admission, or medical necessity reviews for care consistent with CDC guidance.

### **3. How many business interruption claims have been filed during the COVID19 pandemic? Did policyholders report issues with being unaware of pandemic-related exceptions to coverage under these policies?**

A National Association of Insurance Commissioners data call, in which TDI participated, reported 289 businessowner claims and 1,401 commercial multi-peril claims made in Texas as of July 8, 2020. Incurred losses for the Texas claims exceed \$2.3 million.

TDI has received 38 business interruption complaints related to COVID-19. The TDI complaint process can resolve complaints when a company clearly violates the terms of a policy. However, we are unable to resolve certain contract disputes between policyholders and their insurers, particularly if they involve a disagreement over insurance policy language not already interpreted decisively by the courts. Business interruption policies are the subject of ongoing litigation, including multiple federal class action lawsuits, related to the COVID-19 outbreak. We advised policyholders filing complaints about the pending litigation and provided links to legal resources.

### **4. What is the anticipated impact of the COVID-19 pandemic on health insurance premiums and the health insurance market moving forward?**

We don't yet know. Rate filings for plan year 2021 are due by November 1, 2020.

The pandemic is creating offsetting factors in terms of health costs:

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- There are the costs of COVID-19 testing and treatment.
- There are savings due to limitations on elective surgeries and reduced demand for other medical care. However, this could lead to a pent-up demand for services and higher costs once consumers begin scheduling more procedures.

The federal government approves the rates for Affordable Care Act health plans sold through Healthcare.gov, and TDI reviews the rates of state-regulated plans.

**5. Has there been a decrease in auto insurance claims during the COVID-19 pandemic? How many auto insurers have issued credits or rebates to their policyholders due to the COVID-19 pandemic? If so, how was the amount of this credit or rebate determined? What steps are state agencies taking in order to ensure that auto rates are not excessive as a result of a presumptive decrease in driving and claims associated with the COVID-19 pandemic?**

TDI does not yet know the degree to which Texas auto insurance claims have decreased. Auto insurers file quarterly reports with TDI that include paid claims, newly reported claims, paid losses, and incurred losses. The report for the second quarter of 2020 – the quarter most likely to show the greatest impact due to the pandemic – is not yet available.

The Texas Insurance Code gives TDI the authority to order refunds if an insurer has charged a personal auto rate that is excessive or unfairly discriminatory. State law defines an excessive rate as one that is “likely to produce a long-term profit that is unreasonably high in relation to the insurance coverage provided.” To prove a rate is excessive, TDI would need an actuarial analysis based on complete data. It also would require an insurer-by-insurer review with the opportunity for a hearing for any company ordered to provide refunds.

During the pandemic, [about 135 insurers and managing general agents](#) accounting for about 90% of the Texas personal auto market as measured by direct written premium have provided a refund, credit, or dividend. Total refunds exceed \$1.4 billion for Texas policyholders. Each company uses its best estimate of how much premium to return.

TDI will continue to monitor this situation and will require insurers to include their loss experience during the pandemic in setting future rates.

Questions? Contact [GovernmentRelations@tdi.texas.gov](mailto:GovernmentRelations@tdi.texas.gov).

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